

1044b UIC - EAST POPLAR OIL FIELD  
ENFORCEMENT CASE SDWA 1431  
Folder ID: 13635 2001 Privileged

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FORT PECK TRIBE CORRESPONDENCE  
RECEIVED AFTER NOVEMBER 30 2000

East Poplar Oil Field  
Enforcement Case

Region 8



13635



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8  
999 18<sup>TH</sup> STREET - SUITE 300  
DENVER, CO 80202-2466  
<http://www.epa.gov/region08>

APR 24 2001

Ref: 8ENF-T

Arlyn Headdress, Chairman  
Fort Peck Tribal Executive Board  
P.O. Box 1027  
Poplar, Montana 59255

Dear Chairman Headdress:

Thank you for your March 16, 2001 letter to our Acting Regional Administrator Jack McGraw. Your letter has been forwarded to me for a response.

In your letter you discussed the contamination in the groundwater at the East Poplar Oil Field, located within the Fort Peck Indian Reservation and asked to meet with EPA. You expressed your desire that the contaminated groundwater should be cleaned up and informed EPA that the proposed water pipeline system authorized for expenditure by the United States Congress must pass additional hurdles before it is actually constructed. You also expressed concerns about the proposed action to address this contamination.

EPA's short-term goal is to ensure that a permanent reliable water supply is available to residents in the contaminated area. As stated in the Emergency Administrative Order addressing this contamination (Docket Number SDWA-8-99-68), EPA envisions additional actions which will require the responsible companies to take such actions as necessary to address this human health threat. EPA has expressed our support for the proposed water pipeline's construction. As you are aware, we have requested that the residents in and around Poplar, including those in the East Poplar Oil Field, be provided the first deliverable high quality water. For those home sites in the oil field, this piped water would replace the bottled water currently being provided pursuant to EPA's Emergency Administrative Order.

EPA is exploring options to collect contamination data covering a wider area than that studied by the United States Geological Survey. Knowing more about the extent of the groundwater contamination at additional locations will help to determine the total scale of contamination, help locate additional specific sources of contamination, and assist in understanding the actual rate of contaminant plume migration.

Your letter accurately states that many pages of various well records were submitted to EPA in response to EPA's Emergency Administrative Order. However, more information will be



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necessary to accurately identify additional sources of contamination. In fact, the contamination scenarios are so potentially varied, it may never be completely possible to specify each and every contamination event. Nonetheless, EPA will continue to aggressively pursue those parties thought to be responsible for contamination.

As a case in point, I refer you to an April 13, 2001, letter sent to Pioneer Natural Resources USA, Inc., one of the Respondents named by EPA in the East Poplar Oil Field groundwater contamination matter. A copy of that letter was sent to your Office of Environmental Programs. The letter transmits a newly proposed Emergency Administrative Order, which would require Pioneer to permanently remediate the leaking improperly plugged former oil well called the Biere 1-22 well and to monitor that remediation until it is demonstrated that it has been permanently accomplished. If Pioneer and EPA cannot reach agreement on the terms of this Order on consent, EPA maintains the right to issue this Order unilaterally.

I appreciate your request to meet with EPA. Two possibilities for this meeting with both Jack McGraw and myself are Monday, May 7, 2001 (from 2:00 pm to 4:00 pm), and Tuesday, June 5, 2001 (from 3:00 pm to 5:00 pm). I understand that our staffs are working to see if these dates would conform to your schedule. I look forward to meeting with you on this important issue.

Sincerely,



Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

cc: Deb Madison, Manager  
Environmental Programs  
Assiniboine & Sioux Tribes  
P.O. Box 1027  
Poplar, Montana 59255

bcc: Jack McGraw, 8RA  
Connally Mears, 8ENF-T  
Sadie Hoskie, 8P-TA  
Jim Eppers, 8ENF-L  
Steven Moores, 8RC  
Barbara Burkland, 8MO

Dave Carson, Department of Justice  
999 18<sup>th</sup> Street, Suite 945 North Tower  
Denver, Colorado 80202

# FORT PECK TRIBES

Assiniboine & Sioux

March 16, 2001

Jack McGraw  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 8  
999-18<sup>th</sup> Street, Suite 500  
Denver, CO 80202-2466

RECEIVED

APR 06 2001

USEPA RA'S OFFICE

Re: Safe Drinking Water Act § 1431 Emergency Administrative Order (EAO)  
Docket Number SDWA-8-99-68

Dear Mr. McGraw:

I write to respond to EPA's recent inquiry concerning the position of the Fort Peck Tribes on whether Congress' recent authorization of the Fort Peck Reservation Rural Water System affects the need for remediation of the groundwater contamination that is the subject of the Order referred to above. I also write to emphasize the importance to the Tribes of insuring that all existing sources of groundwater contamination in the East Poplar Oil Field are identified and arrested.

In the Tribes' view, EPA should require the persons who contaminated the groundwater in the East Poplar Oil Field to clean it up. This is essential to the successful implementation of the Order -- for unless the contamination is remediated, the groundwater in the East Poplar Oil Field will remain undrinkable and unusable. We recognize that before directing remediation, EPA wished to gather further information to enable it to identify the responsible parties. But now that this has been done, those responsible must be required to clean up the contamination caused by their actions, so that the groundwater can once again *safely* be used as drinking water. There is no reason that the water line should relieve the responsible parties of their obligation to fix the harm that they have caused.

Furthermore, as you know, while Congress has authorized construction of the Water System, funds must first be appropriated for construction to go forward. This is a process which we do not control and while we will make every effort to obtain the necessary appropriations, there are no guarantees that Congress will appropriate these funds. We cannot, in any event, make the remediation of existing contamination dependent on a separate, congressional process, which we do not control. Certainly those who depend on the East Poplar Oil Field for their drinking water should not have to wait for the line to

39508.1





become operational in order to get safe drinking water.

We also want to emphasize that we agree, as EPA's letter to Pioneer's counsel of January 3, 2001 makes clear, that the first step in remediating groundwater contamination from the Biere 1-22 well is to identify the source of the leak in this well. We also want to reiterate our view, expressed to EPA by our Office of Environmental Protection ("OEP") at the February 16, 2001 meeting with Pioneer, that any method proposed to fix the leak must be shown both to have a track record of success in comparable circumstances and must be shown to be environmentally safe. Otherwise, the attempt to fix the leak might actually make the contamination worse. Finally, whatever method is used to attempt to stop the leak from the Biere 1-22 well, we believe it is imperative that EPA make it clear that there is only one right result -- actually stopping the contamination -- which must ultimately be achieved before remediation may begin.

In light of the importance of these matters, we request an opportunity to meet with EPA officials to discuss these matters further.

Sincerely,



Arlyn Headdress

cc: Nathan M. Wiser, Environmental Scientist  
Connally Mears, Enforcement Chief

[initials]  
[initials]  
[initials]

**Controlled Correspondence For  
REGION 8**

**CONTROL NO :** R8-0100034

<b>ORIG. DUE DATE:</b> 04/20/2001 <b>EXT. DUE DATE:</b> 04/23/2001
---

**STATUS:** CONTROLLED

**CORRES. DATE:** 03/16/2001  
**RECEIVED DATE:** 04/06/2001  
**ASSIGNED DATE:** 04/06/2001  
**CLOSED DATE:**

**FROM:** ARLYN HEADDRESS  
**ORG:** FORT PECK TRIBES  
**SALUTATION:** DEAR MR. HEADDRESS  
**CONSTITUENT:** ARLYN HEADDRESS

**TO:** MCGRAW/JACK  
**TO ORG:** ORA  
**SUBJECT:** SAFR DRINKING WATER ACT 1431 EAO DOCKET NUMBER SDWA-8 99-68

**ASSIGNED:** Office of Partnerships and Regulatory Assistance, Office of Enforcement Compliance & Environmental Justice

**COPIES OF INCOMING PROVIDED TO:** Sadie Hoskie & Steve Tuber

**SIGNATURE:** Program/Office Director  
**R8 COMMENTS:** DO NOT REASSIGN

**R8 INSTRUCTIONS:** Please prepare reply for Program/Office Director signature and include control number on reply. Send copy of reply to RA's Office.

	Assigned	Date Assigned	Code/Status	Date Completed by Assignee	Date Returned to R8 :
Lead	OPRA	04/06/2001	ACTION	-	-
	OECEJ	04/09/2001	ACTION	-	-



Controlled Correspondence For  
REGION 8

CONTROL NO : R8-0100034

ORIG. DUE DATE: 04/20/2001

STATUS: CONTROLLED

CORRES. DATE: 03/16/2001  
RECEIVED DATE: 04/06/2001  
ASSIGNED DATE: 04/06/2001  
CLOSED DATE:

FROM: ARLYN HEADDRESS  
ORG: FORT PECK TRIBES  
SALUTATION: DEAR MR. HEADDRESS  
CONSTITUENT: ARLYN HEADDRESS

TO: MCGRAW/JACK  
TO ORG: ORA  
SUBJECT: SAFR DRINKING WATER ACT 1431 EAO DOCKET NUMBER SDWA-8 99-68

ASSIGNED: Office of Partnerships and Regulatory Assistance

COPIES OF INCOMING PROVIDED TO: Sadie Hoskie & Steve Tuber

SIGNATURE: Program/Office Director  
R8 COMMENTS: DO NOT REASSIGN

*(Steve may sign - Concurrence by Tribal please)*

R8 INSTRUCTIONS: Please prepare reply for Program/Office Director signature and include control number on reply. Send copy of reply to RA's Office.

	Assigned	Date Assigned	Code/Status	Date Completed by Assignee	Date Returned to R8 :
Lead	OPRA - <i>LS</i>	04/06/2001	ACTION	-	-

4/9

Please reassign to ENF, per Steve Tuber, 6268.

Thanks!  
hinda  
x6294

*Wiser*

**Controlled Correspondence For  
OFFICE OF ENFORCEMENT COMPLIANCE & ENVIRONMENTAL JUSTICE**

CONTROL NO : R8-0100034

*4-23-01*

ORIG: DUE DATE: 04/20/2001
----------------------------

STATUS: PENDING

CORRES. DATE: 03/16/2001  
RECEIVED DATE: 04/06/2001  
ASSIGNED DATE: 04/10/2001  
CLOSED DATE:

FROM: ARLYN HEADDRESS  
ORG: FORT PECK TRIBES  
SALUTATION: DEAR MR. HEADDRESS  
CONSTITUENT: ARLYN HEADDRESS

TO: MCGRAW/JACK  
TO ORG: ORA  
SUBJECT: SAFR DRINKING WATER ACT 1431 EAO DOCKET NUMBER SDWA-8 99-68

ASSIGNED: Technical Enforcement Program

COPIES OF INCOMING PROVIDED TO: Sadie Hoskie & Steve Tuber

SIGNATURE: Program/Office Director

OECEJ COMMENTS:

Added on: 04/10/2001 From Consuelo Dominguez/ENF/R8/USEPA/US -assigned to  
*Diane Sipe* *Mean*

R8 INSTRUCTIONS: Please prepare reply for Program/Office Director signature and include control number on reply. Send copy of reply to RA's Office. **+ TAP**

OECEJ INSTRUCTIONS:

	Assigned	Date Assigned	Code/Status	Date Completed by Assignee	Date Returned to OECEJ :
Lead	OECEJ T	04/10/2001	ACTION	<i>4-16-01 -</i> <i>N. Wiser</i>	

**Controlled Correspondence For  
REGION 8**

**CONTROL NO :** R8-0100034

<b>ORIG. DUE DATE:</b> 04/20/2001
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	OECEJ	04/09/2001	ACTION	-	-



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REGION 8  
999 18<sup>TH</sup> STREET - SUITE 300  
DENVER, CO 80202-2466  
<http://www.epa.gov/region08>

### CONCURRENCE COPY

Ref: 8ENF-T

Arlyn Headdress, Chairman  
Fort Peck Tribal Executive Board  
P.O. Box 1027  
Poplar, Montana 59255

Dear Chairman Headdress:

Thank you for your March 16, 2001 letter to our Acting Regional Administrator Jack McGraw. Your letter has been forwarded to me for a response.

In your letter you discussed the contamination in the groundwater at the East Poplar Oil Field, located within the Fort Peck Indian Reservation and asked to meet with EPA. You expressed your desire that the contaminated groundwater should be cleaned up and informed EPA that the proposed water pipeline system authorized for expenditure by the United States Congress must pass additional hurdles before it is actually constructed. You also expressed concerns about the proposed action to address this contamination.

EPA's short-term goal is to ensure that a permanent reliable water supply is available to residents in the contaminated area. As stated in the Emergency Administrative Order addressing this contamination (Docket Number SDWA-8-99-68), EPA envisions additional actions which will require the responsible companies to take such actions as necessary to address this human health threat. EPA has expressed our support for the proposed water pipeline's construction. As you are aware, we have requested that the residents in and around Poplar, including those in the East Poplar Oil Field, be provided the first deliverable high quality water. For those home sites in the oil field, this piped water would replace the bottled water currently being provided pursuant to EPA's Emergency Administrative Order.

EPA is exploring options to collect contamination data covering a wider area than that studied by the United States Geological Survey. Knowing more about the extent of the groundwater contamination at additional locations will help to determine the total scale of contamination, help locate additional specific sources of contamination, and assist in understanding the actual rate of contaminant plume migration.

Your letter accurately states that many pages of various well records were submitted to EPA in response to EPA's Emergency Administrative Order. However, more information will be



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necessary to accurately identify additional sources of contamination. In fact, the contamination scenarios are so potentially varied, it may never be completely possible to specify each and every contamination event. Nonetheless, EPA will continue to aggressively pursue those parties thought to be responsible for contamination.

As a case in point, I refer you to an April 13, 2001, letter sent to Pioneer Natural Resources USA, Inc., one of the Respondents named by EPA in the East Poplar Oil Field groundwater contamination matter. A copy of that letter was sent to your Office of Environmental Programs. The letter transmits a newly proposed Emergency Administrative Order, which would require Pioneer to permanently remediate the leaking improperly plugged former oil well called the Biere 1-22 well and to monitor that remediation until it is demonstrated that it has been permanently accomplished. If Pioneer and EPA cannot reach agreement on the terms of this Order on consent, EPA maintains the right to issue this Order unilaterally.

I appreciate your request to meet with EPA. Two possibilities for this meeting with both Jack McGraw and myself are Monday, May 7, 2001 (from 2:00 pm to 4:00 pm), and Tuesday, June 5, 2001 (from 3:00 pm to 5:00 pm). I understand that our staffs are working to see if these dates would conform to your schedule. I look forward to meeting with you on this important issue.

Sincerely,

Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

cc: Deb Madison, Manager  
Environmental Programs  
Assiniboine & Sioux Tribes  
P.O. Box 1027  
Poplar, Montana 59255

bcc: Jack McGraw, 8RA  
Connally Mears, 8ENF-T  
Sadie Hoskie, 8P-TA  
Jim Eppers, 8ENF-L  
Steven Moores, 8RC  
Barbara Burkland, 8MO

Dave Carson, Department of Justice  
999 18<sup>th</sup> Street, Suite 945 North Tower  
Denver, Colorado 80202





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CONCURRENCE COPY

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Arlyn Headdress, Chairman  
Fort Peck Tribal Executive Board  
P.O. Box 1027  
Poplar, Montana 59255

Dear Chairman Headdress:

Thank you for your March 16, 2001 letter to our Acting Regional Administrator Jack McGraw, which we received on April 6, 2001. Your letter has been forwarded to me for a response. *additional* In your letter you discussed the contamination in the groundwater at the East Poplar Oil Field, located within the Fort Peck Indian Reservation and asked to meet with EPA. You expressed your desire that the contaminated groundwater should be cleaned up, informed EPA that the proposed water pipeline system authorized for expenditure by the United States Congress must pass hurdles *the* before it is actually constructed, and emphasized that the proposed solution to one of the identified sources of the groundwater contamination should not make the contamination worse and should utilize a proven technology.

EPA's short-term goal is to ensure that a permanent reliable water supply is available to residents in the contaminated area, and *the* long-term goal is that the contaminated groundwater is cleaned up. As stated in the Emergency Administrative Order addressing this contamination (Docket Number SDWA-8-99-68), EPA envisions additional actions which will require the responsible companies to take such actions as necessary to remove this human health threat. EPA has also taken an active role in *the* influencing the sequence of the proposed water pipeline's construction *stages* such that, when the pipeline is built, the residents in and around Poplar, including those in the East Poplar Oil Field, will be provided the first deliverable high quality water. For those home sites in the oil field, this piped water would replace the bottled water currently being provided pursuant to EPA's Emergency Administrative Order.

EPA is exploring options to collect contamination data covering a wider area than that studied by the United States Geological Survey. Knowing more about the extent of the groundwater contamination at additional locations will help to determine the *extent* total scale of contamination, help locate additional specific sources of contamination, and assist in understanding the actual rate of contaminant plume migration.

Control No. R8-0100034

8ENF-T  
NW  
4-18-01

THE  
8ENF-T  
4-18-01  
w/changes

4/18/01

8ENF  
4-19-01



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Your letter accurately <sup>states</sup> mentions that many pages of various well records were submitted to EPA in response to EPA's ~~before-mentioned~~ Emergency Administrative Order. However, more information will be necessary to accurately <sup>IDENTIFY</sup> know additional sources of contamination. In fact, the contamination scenarios are so potentially varied, it may never be completely possible to specify each and every contamination event. Nonetheless, EPA will continue to aggressively pursue ~~on these~~ <sup>PARTIES</sup> companies thought to be responsible for contamination.

As a case in point, I refer you to an April 13, 2001, letter sent to Pioneer Natural Resources USA, Inc., one of the Respondents named by EPA in the East Poplar Oil Field groundwater contamination matter. A copy of that letter was sent to your Office of Environmental <sup>Programs</sup> ~~Protection~~. The letter transmits a newly proposed Emergency Administrative Order, which would require Pioneer to permanently remediate the leaking improperly plugged former oil well called the Biere 1-22 well, and to monitor that remediation until it is demonstrated that it has been permanently accomplished. If Pioneer and EPA cannot reach agreement on the terms of this Order on consent, EPA maintains the right to issue this Order unilaterally. ✓

I appreciate your request to meet with EPA. One opportunity may occur during the quarterly Regional Operating Committee meeting June 19-21, 2001 in Fort Yates, North Dakota. I would welcome other options you may suggest. If you have any questions, the most knowledgeable person on my staff is Nathan Wiser, who can be reached at (303) 312-6211. Please have your staff work with him on any questions or to schedule a meeting.

<sup>REGARDING  
THIS  
CASE</sup>  
Sincerely,

Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

cc: Deb Madison, Manager  
Environmental Programs  
Assiniboine & Sioux Tribes  
P.O. Box 1027  
Poplar, Montana 59255

bcc: Jack McGraw, 8RA  
Connally Mears, 8ENF-T  
Sadie Hoskie, 8P-TA  
Jim Eppers, 8ENF-L  
Steven Moores, 8RC

Dave Carson, Department of Justice  
999 18<sup>th</sup> Street, Suite 945 North Tower  
Denver, Colorado 80202

Nathan Wiser

AUG 21 2001

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ARTHUR LAZARUS, JR., P.C.  
ROGER W. DUBROCK (AK)\*  
MATTHEW S. JAFFE  
JOHN P. LOWNDES (AK)

\*NOT ADMITTED IN D.C.

August 16, 2001

James H. Eppers  
Enforcement Attorney  
United States Environmental Protection Agency  
Region 8  
999 18th Street, Suite 500  
Denver, Colorado 80202-2466

Re: Fort Peck Indian Reservation Groundwater Contamination (B112.31)

Dear Mr. Eppers:

As the Fort Peck Tribes have discussed with EPA, the Tribes firmly believe that the persons who contaminated the groundwater in the East Poplar Oil Field should be required to clean it up, and that remediation of the existing contamination is essential to the successful implementation of the Emergency Administrative Order (EAO) Docket Number SDWA-8-99-68 for the East Poplar Field. Otherwise, the water will remain unsafe and undrinkable. When we met to discuss the status of the administration of the EAO, a question was raised as to the authority of EPA to require remediation, which prompts this letter. As set out below, we believe EPA's authority under the Safe Drinking Water Act with respect to ordering remediation of the East Poplar Field is clear.

A more recent case discussing EPA's broad authority under the SDWA, as well as other environmental statutes, is Trinity American Corp. v. E.P.A., 150 F.3d 389 (4th Cir. 1998), in which an owner of a polyurethane foam company, Trinity American Corp. ("Trinity") sought review of an emergency order issued by EPA under the Safe Drinking Water Act. The order required testing of the groundwater in the area for as long as contaminants were present, directed the company to provide drinking water to any persons in the area whose water was contaminated, and further provided that if "a well cannot consistently provide water that meets EPA standards, Trinity must provide a permanent, alternative source of safe drinking water." Id. at 394.

Trinity challenged the emergency order on a number of grounds, asserting, *inter alia*, that the emergency order improperly displaced state authority to address groundwater contamination, and that there was no rational basis for finding "imminent and substantial endangerment" because there was no evidence that anyone was actually drinking contaminated water. The Court rejected all of Trinity's arguments.

In setting out the legal framework for its discussion of the breadth of the EPA's authority, the Court relied on the oft-cited House Report that accompanied the SDWA, which specifically discusses the principles behind the SDWA's emergency order provision and EPA's power to act in this particular case. As the Court made clear:

EPA may issue any order "as may be necessary to protect the health of persons who are or may be users" of a public drinking water system. 42 U.S.C.A. § 300i(a). "Such orders may be issued to obtain relevant information about impending or actual emergencies, to require the issuance of notice so as to alert the public to a hazard, to prevent a hazardous condition from materializing, *to treat or reduce hazardous situations once they have arisen*, or to provide alternative safe water supply sources in the event any drinking water source which is relied upon becomes hazardous or unusable. House Report, 1974 U.S.C.C.A.N. at 6487.

Id. at 395 (quoting H.R. Rep. No. 93-1185, 93<sup>rd</sup> Cong., 2d Sess. 35-36 (1974), reprinted in 1974 U.S.C.C.A.N. 6454, 6487) (emphasis added). The Court further noted that EPA's emergency powers may be exercised notwithstanding any other provision of the Act. Quoting Judge Friendly in U.S. v. Hooker Chemicals & Plastics Corp., 749 F.2d 968 (2d Cir. 1984), the case arising out of the Love Canal contamination, the Court concluded that EPA is "'authorized to overlook technological and economic feasibility and, 'unlimited by other constraints, [to] giv[e] paramount importance to the sole objective of the public health.'" 150 F.3d at 394-95.

Other cases similarly read section 1431 as providing EPA with broad authority. In fact, the Court in Hooker Chemicals found the authority granted to EPA in each of the major environmental statutes to be especially broad, particularly with regard to remedies. Judge Friendly observed:

This broad authority granted to the Administrator extends not only to the decision to bring a suit, but also to defining what level of a given pollutant constitutes "an imminent and substantial endangerment," *and, most importantly, to deciding what the appropriate remedy should be.* See 33 U.S.C. § 1364 (CWA) (Administrator should "take such other action as may be necessary" to abate the hazard); 42 U.S.C. § 300i (SDWA) (action Administrator may take "may include (but shall not be limited to)" issuing orders and filing civil actions); id. § 6973(a) (RCRA) as amended in

1980) (Administrator may "take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and the environment").

749 F.2d at 988-89 (citations to the 1974 House Report omitted) (emphasis added).<sup>1</sup>

This is, of course, not the only time a court has considered the breadth of the power Congress granted EPA in these statutes. The Third Circuit has also observed that Congress' intent was to confer broad power upon EPA, including the power to order remediation. See, United States v. Rohm and Haas Company, 2 F.3d 1265 (3d Cir. 1993). In this case, the Court was discussing a particular section of CERCLA (concerning recovery costs) when it observed that:

Congress . . . undoubtedly was aware that pursuant to CERCLA §106 as well as other statutes, EPA would be forcing numerous *private parties to conduct removal and remedial activities* and overseeing the implementation of its directives. In fact, provisions which allow EPA to force private parties to undertake corrective action at their own expense is a favorite policy tool of Congress and on that can be found in a number of environmental statutes. See, e.g., RCRA §3008(h), 42 U.S.C. § 6928(h) (1988); Federal Clean Water Act §311(e), 33 U.S.C. §1321(e) (1988); *Safe Drinking Water Act*, §1431, 42 U.S.C. §300i (1988).

Id. at 1276 & n. 18 (emphasis added).

Finally, an unpublished district court decision, United States v. Stringfellow, 1984 W.L. 3206, \*7 (C.D. Cal. 1984), discusses the common law predecessors to the "imminent hazard" provision in the modern-day environmental statutes, observing that:

Like other imminent and substantial endangerment provisions in environmental statutes, (e.g. section 504 of the Clean Water Act, section 303 of the Clean Air Act, and section 1431 of the Safe Drinking Water Act), section 7003 is essentially a codification of common law public nuisance remedies. The Congress made this intent clear as early as 1948 when, in section 2(d) of the Water Pollution Control Act (the forerunner of present-day imminent hazard provisions), it expressly declared that "[t]he pollution of interstate waters ... which endangers the health or welfare of persons ... is hereby declared to be a public nuisance and subject to abatement as

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<sup>1</sup> As the Court's discussion demonstrates, although the language of the quoted provisions may vary slightly between the CWA, SDWA and RCRA, there is nothing to suggest that one statute authorizes EPA to require site remediation while another does not.



James H. Eppers  
August 16, 2001  
Page 4

herein provided" and authorized the appropriate Federal official to request the Attorney General to bring suit on behalf of the United States "to secure abatement of the pollution."

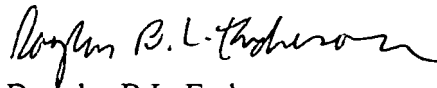
Id.

Here, too, the thrust of the court's discussion is that Congress gave very broad powers to EPA to remedy environmental dangers and hazards, whether imminent or existing. The court in Stringfellow simply observed that Congress has long recognized the problem of pollution and recognized that it had the power to confer broad authority to effect a proper remedy.

Given the above discussion, we believe it is clearly within EPA's authority to order remediation of the contamination of the East Poplar Field. As the courts have recognized, Congress intended to provide broad power to EPA to enjoin activities that cause environmental harm and to require remediation of the consequences of such harm.

We look forward to continuing our work together in this important matter for the Tribes.

Sincerely,



Douglas B.L. Endreson

cc: Arlyn Headdress, Chairman  
Ms. Debbie Madison, Office of Environmental Protection